

ORIGINAL

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

NOV 10 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding)

PP Docket No. 93-253

To: The Commission

COMMENTS OF CHICKASAW TELEPHONE COMPANY

Counsel:

John A. Prendergast
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, NW
Suite 300
Washington, DC 20037
(202) 659-0830

Dated: November 10, 1993

No. of Copies rec'd
List A B C D E

0 + 10

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED

NOV 10 1993

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act)
Competitive Bidding)

To: The Commission

COMMENTS OF CHICKASAW TELEPHONE COMPANY

Chickasaw Telephone Company (Chickasaw) hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) in PP Docket No. 93-253, Mimeo No. FCC 93-455, released October 12, 1993. Chickasaw urges the Commission to adopt a definition of "rural telephone company" broad enough to include all small telephone companies serving rural exchanges, so that the mandate of Congress is fully implemented with regard to the licensing of a wide variety of applicants in personal communications services (PCS) and other emerging technologies.

Likewise, Chickasaw urges the Commission to clarify that the restrictions on PCS applications by entities holding an interest in a cellular license do not apply to the frequency blocks set aside for rural telephone companies, small businesses, and minority/woman-owned businesses, because of their designation by Congress as protected groups. The Commission should also encourage investment in PCS licensees formed by rural telcos, by allowing settlements and/or ownership changes that are designed to bolster the capital available to such protected groups, both before and after the auction process.

In support of these comments, the following is shown:

I. The Commission Should Ensure that All Rural Telephone Companies are Eligible for the Protections Mandated by Congress.

In enacting the Omnibus Budget Reconciliation Act of 1993 (the Budget Act), Congress instructed the Commission to design a licensing scheme that would allow competitive bidding for available spectrum that is used to provide commercial services to the public. In authorizing such spectrum auctions, Congress identified four groups as entitled to special consideration in the auction process, due to the importance of ensuring their participation in the provision of PCS and other emerging technologies. These groups include rural telephone companies, small businesses, minority-owned businesses and woman-owned businesses. The instant proceeding will define each of these groups, for purposes of determining which entities can take advantage of any protections or preferences the FCC adopts.

With regard to rural telephone companies, the Commission's NPRM proposes a definition that mirrors the eligibility criteria for an exemption from the telephone company/cable television cross-ownership restrictions as defined in Section 63.58 of the Commission's rules. See NPRM at p. 25. However, it is respectfully submitted that this definition is far too restrictive to protect the group whose participation has been deemed so important by Congress. The cable/telco cross-ownership restriction is designed only as an attempt to identify those communities that are so small that cable television providers are unlikely to view them as a service opportunity. This in no way equates to the definition of the rural communities which Congress

sought to protect in passing the Budget Act, i.e., those communities whose population density and remoteness may not prevent PCS providers from ever serving them, but will likely result in a substantial delay before service is extended. A community can be greater than the 2500 inhabitants defined in Rule Section 63.58, and yet be among those communities that are likely to languish without the benefit of PCS and other enhanced services, unless the telephone company dedicated to serving the community is allowed to establish these new services.

As the NPRM recognizes (at footnote 54), the Commission already has before it a proposal to change the size of the rural community qualifying for a cable/telco cross-ownership exemption, by increasing the permitted number of inhabitants to 10,000 or less. This increase in the permitted population is a step in the right direction, and should be adopted. However, it is respectfully submitted that the approach taken in Rule Section 63.58 is too inflexible to adequately protect rural telephone company interests, and a different approach is needed.

A better approach would be to define "rural telephone company" to include any telephone company predominately serving "rural areas," even if its certificated area incidentally includes a part of a community of greater than 10,000, or an urbanized area. The term "rural area" should be defined as any exchange within the telephone company's certificated area which contains 10,000 inhabitants or less, and no portion of an urbanized area. See, e.g., Joint Petition for Further Notice of

Proposed Rulemaking in General Docket No. 90-314, filed by Rocky Mountain Telecommunications Association and Western Rural Telephone Association on September 10, 1993, at pp. 20-21. This approach was taken by the Senate in drafting the proposed "rural licensing program" contained in its version of the Budget Act, and would help ensure that new technologies such as PCS would be provided to rural areas as rapidly as possible, as mandated by Congress. The Commission's universal service goal would likewise be preserved, since rural carriers could compete against PCS providers trying to "cherry pick" their customers.

The definition proposed by the Commission does not fulfill this mandate, since rural carriers such as Chickasaw may be excluded, even though they serve rural exchanges. For example, Chickasaw currently serves 9 exchanges (including a total of only 7433 access lines), each of which contains 10,000 inhabitants or less. However, it likewise extends 126 access lines into small towns (such as Rosedale) bordering Oklahoma City, and included in the Oklahoma City Metropolitan Statistical Area (MSA) and Basic Trading Area (BTA). Under the Commission's proposed definition, the provision of service to these 126 customers in a "part of" a larger community may prevent Chickasaw from serving its several rural exchanges, since it will enjoy no advantages in a PCS auction.

The Commission should also make it clear that the cellular ownership restrictions recently adopted in its Second Report and Order in General Docket No. 90-314 do not apply to the spectrum

blocks set aside for rural telephone companies and the other protected groups identified by Congress. Even though the Commission retreated from its proposal to restrict any carrier with even a one percent interest in cellular, the 20 percent benchmark adopted by the Commission still excludes a number of telephone carriers such as Chickasaw, who have minority interests that may surpass this benchmark, and yet still exercise little or no control over whether the cellular system will extend service to their rural exchanges or over any other aspect of the service. Moreover, while cellular and PCS will overlap in services provided to some degree, these services will not be identical. Thus, excluding rural telephone companies because of their cellular interests may have the effect of denying rural areas the many new services to be ushered in by PCS. Therefore, the cellular ownership attribution rules adopted for PCS should not be applied to PCS blocks C and D. If the Commission is to apply any such attribution rule to rural telephone companies and other protected groups eligible for this spectrum, the benchmark should be increased for this category of carriers from the 20 percent proposal to actual control (i.e., at least 50.1 percent).

II. The Commission Should Adopt Bid Payment Plans and Resale Restrictions that are Designed to Encourage Investment in Rural Telephone Company PCS Systems.

Chickasaw agrees with the Commission's proposal to allow the protected groups identified by Congress to pay their bids by installments. See NPRM at p. 26. The NPRM requests comment on whether the installment payment benefit should apply to all of

the enumerated entities in all services, or only certain entities in certain contexts. Id. Chickasaw urges that the Commission certainly adopt an installment payment plan for eligible rural telephone companies (as defined above) proposing to serve a Basic Trading Area (BTA) which includes their certificated telephone service areas. Chickasaw does not express an opinion with regard to other enumerated entities. Chickasaw also supports the Commission's proposals to (1) issue tax certificates to those investing in the protected groups; (2) allow royalty payments for part of the bid; (3) allow protected entities such as rural telephone companies to take advantage of "distress sale" situations; and (4) allow bid credits for protected groups.

Chickasaw also requests that the Commission encourage investment in the PCS proposals of rural telephone companies, during both the pre-auction and post-auction phases of the licensing process. In particular, rural telephone companies should be allowed to form consortia with either wireline or non-wireline entities, without losing the benefit of the above described protections. The test for allowing a rural telephone company applicant to retain these benefits should be whether the rural telephone company (or companies) included in the consortium retain at least 50.1 percent voting power in decisions affecting the operation of the PCS system.

Likewise, investment should be encouraged by allowing rural telephone companies to form a consortium, or add partners to an existing consortium, after the auction process. Thus, a rural

telephone company successfully bidding on a BTA license should be allowed to add limited equity partners to the licensed entity, even if the total equity interests of otherwise ineligible (i.e., non-rural telephone company) entities exceeds 50 percent, so long as the rural telephone company retains at least 50.1 percent voting power. This procedure would help eliminate one of the greatest obstacles to participation by the protected groups that the Commission's Small Business Advisory Committee (SBAC) has identified, namely, capital formation. See September 15, 1993 SBAC Report in General Docket No. 90-314, Appendix C to Second Report and Order (FCC 93-451), released October 22, 1993, at p. i.

The SBAC report (at p. 22) recommends that "minority and female-controlled entities should be subject to anti-trafficking requirements, should maintain 51 percent equity and voting control from the initial grant through construction and operation of the PCS license." Chickasaw does not oppose this viewpoint; however, such requirement should be modified for rural telephone companies, to allow less than 50 percent equity if positive voting power is retained. The purpose of requiring designated levels of equity and voting power is to ensure that the applicant does not become a "front" for an ineligible entity. In the case of rural telephone companies, this concern is significantly reduced. Such telephone companies have generally been in existence for a number of years, and have been issued a certificate of public convenience and necessity after close

scrutiny by state regulatory authorities. These carriers have a vested interest in providing PCS and other new services to their subscribers, and the Commission can therefore verify that these applicants have not merely been established as a front for another larger and ineligible entity.

Where the cumulative equity interest of non-rural telephone companies exceeds 50 percent, Chickasaw would propose to allay any concerns about control by ineligible entities, by requiring that these entities hold limited partnership interests with no power to vote on matters concerning the day-to-day operation of the PCS system. Instead, these investors would hold a passive interest, and would be allowed to vote on only those fundamental matters that usually require a supermajority vote. Such matters would include a decision to sell the licensee, or wind down the business. Similar limited partnerships have been successfully utilized in the cellular arena. By allowing the formation of such partnerships, the Commission would be increasing the chances for rural telephone companies to overcome the capital formation barrier identified by the SBAC, while at the same time maintaining control over the functioning of the system. This will allow rural telephone companies to ensure that service to their rural certificated areas is not unduly delayed.

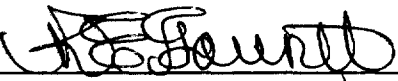

Chickasaw agrees that some restrictions may be appropriate on the alienation of a PCS license granted to a protected entity under favorable terms. However, for the reasons described above, the Commission should not apply any of its proposed anti-

trafficking restrictions to a rural telephone company that is not alienating control over the license, but instead, is merely adding passive investors, to bolster its ability to promptly implement service to rural communities.

Respectfully submitted,

CHICKASAW TELEPHONE COMPANY

BY:

Title

Filed: November 10, 1993